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FM AMEMBASSY COLOMBO
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RUEHKA/AMEMBASSY DHAKA PRIORITY 2428
RUEHIL/AMEMBASSY ISLAMABAD PRIORITY 9445
RUEHKT/AMEMBASSY KATHMANDU PRIORITY 7700
RUEHLO/AMEMBASSY LONDON PRIORITY 5449
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 3867
RUEHNY/AMEMBASSY OSLO PRIORITY 0035
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0235
RUEHSM/AMEMBASSY STOCKHOLM PRIORITY 0853
RUEHKO/AMEMBASSY TOKYO PRIORITY 4498
RUEHCG/AMCONSUL CHENNAI PRIORITY 0006
RUEHBI/AMCONSUL MUMBAI PRIORITY 7240
RUEHON/AMCONSUL TORONTO PRIORITY 0230
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 0142
RHHMUNA/HQ USPACOM HONOLULU HI PRIORITY
RUEHBS/USEU BRUSSELS PRIORITY
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 000121

SIPDIS

DEPARTMENT FOR SCA/INSB

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TAGS: [PGOV](#) [PREL](#) [PREF](#) [PHUM](#) [PTER](#) [EAID](#) [MOPS](#) [CE](#)

SUBJECT: 2007 IWOC AWARDEE FIGHTS UPHILL BATTLE ON JUDICIAL

REFORM

COLOMBO 00000121 001.2 OF 002

Classified By: DEPUTY CHIEF OF MISSION VALERIE C. FOWLER. REASONS: 1.4
(B, D)

¶1. (C) SUMMARY: Kishali Pinto-Jayawardena, 2007 Sri Lankan recipient of the Secretary's International Women of Courage Award, related frustration with the presidential election, the Rajapaksa family, and a weak Sri Lankan civil society. She also discussed her recent report on post-war justice, which argued that large-scale judicial reform would better serve justice than creation of a Commission of Inquiry. END SUMMARY.

A ROUGH ROAD AHEAD

¶2. (C) Poloff met with Kishali Pinto-Jayawardena, 2007 recipient of the International Women of Courage Award, to discuss her post-election outlook and her recent report "Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry" (Report for the International Commission of Jurists (ICJ). Pinto-Jayawardena is a prominent attorney, journalist, and human rights advocate in Sri Lanka.

¶3. (C) Pinto-Jayawardena expressed deep frustration with the recent presidential election. While she was pleasantly surprised by the minimal violence, she was confident that results had been rigged. She lamented that Sri Lanka had a history of democratic elections, even during conflict times, and that this election's lack of credibility had shaken Sri Lankans' confidence in the system. Characterizing voting as an affirmation of citizenship, she predicted low voter turnout in the April parliamentary elections and said she did not intend to vote herself.

¶4. (C) In Pinto-Jayawardena's view, the threat of the LTTE

had been replaced by a "totalitarian" government, dangerous in its family ties. She argued that President Rajapaksa might let go of the reins a bit if he were on his own, but the desire to pass control down the family tree even when he left office precluded good governance. (NOTE: one of the President's sons is standing for the April parliamentary elections in the family's home district. END NOTE.) She warned that international pressure would be ineffective and that a "Burma-like situation would not be impossible." She expressed concern over Sri Lanka's future, describing a "vacuum" in civil society. Unlike neighboring countries, Sri Lanka lacked strong voices and organizers willing to demand change. Instead, Sri Lanka had only political parties, and even academia had become politicized.

JUDICIAL REFORM KEY TO ACCOUNTABILITY

¶15. (C) Unlike many human rights advocates, Pinto-Jayawardena argued against establishing a Commission of Inquiry (COI) to investigate war crimes and human rights violations committed during the final phases of the war, calling instead for widespread judicial reform. Her Report posited that COIs, as statutorily designed in Sri Lanka, were not equipped for large-scale inquiries into gross human-rights violations and had been used to protect perpetrators and institutions from accountability.

¶16. (C) As detailed in the Report, the Commission of Inquiry Act of 1948 (Act) did not address whether disclosures must lead to individual prosecutions in the court system. A review of COIs from 1977 to 2001 found that most COI recommendations to prosecute had not been followed. The Act also did not address protection of victims or witnesses or

COLOMBO 00000121 002.2 OF 002

the rights of the accused. At the same time, cases brought directly to the criminal justice system had resulted largely in non-indictment, acquittals, and withdrawals because of systematic flaws in the investigatory and prosecutorial process, lack of judicial independence, and gaps in criminal law itself. The solution was legal reform and adherence to rule of law.

¶17. (C) Despite the Report's sharp criticism of Sri Lanka accountability mechanisms, Pinto-Jayawardena noted that the Government of Sri Lanka had not responded negatively. She attributed this to the Report's reliance on concrete examples and meticulous documentation which left little for the GSL to refute.

COMMENT

¶18. (C) Our meeting with Pinto-Jayawardena highlighted once again the pitfalls of pushing hard on accountability. As she noted, Sri Lanka has a long but unsuccessful history of inquiry commissions that often covered up or excused more than they revealed. Attempts to create such a commission now to investigate war crimes -- which may have involved top leaders of the country, including the president's brother -- would not likely be any more successful than past commissions. A more fruitful approach in this case could be to quietly encourage foreign law enforcement and judicial officials and NGOs to amass evidence of suspected crimes that could be used in a formal judicial process. On the Sri Lankan domestic side, little appears possible in the short term, particularly following the president's January 26 re-election and in advance of the April parliamentary elections. In the longer term, Pinto-Jayawardena's plan for judicial reform and strengthening the independence and professionalism of the judiciary offers hope for ending the cycle of crimes and impunity.

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